



# Kent County Department of Aeronautics Kent County International Airport

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October 30, 1997

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Office of the Secretary  
Federal Communications Commission  
1919 M. Street, NW  
Washington, DC 20554

Subject: Comments - NPRM - MM Docket No. 97-182

Gentlemen:

Enclosed please find an original and nine copies of this Department's comments regarding the above-referenced Notice of Proposed Rule Making concerning the proposed preemption of state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities. The Kent County Department of Aeronautics' interest in this matter results from our responsibility to protect navigable airspace as provided in the County's Airport Zoning Ordinance. This ordinance was developed for the protection and safety of the flying public.

Based on our review of the proposed Rule Making, we offer the following comments:

The scope of the preemption authority exceeds the authority of the Federal Communications Commission. Based on Discussion paragraph III(12), it would seem that preemption authority has been granted in cases of RF interference and where state and local regulations directly interfere with the objectives of Congress. The objectives of Congress relating to this matter appear to be confined to the rapid implementation of the DTV facilities. The Petitioner's Proposed Preemption Rule states "the rule is being proposed for the rapid deployment of Digital Television (DTV) services as authorized by the Commission in MM Docket No. 87-268, and in recognition of the need to facilitate the siting and construction of broadcast transmission facilities generally, the following shall apply to the siting of new broadcasting facilities or ...". The petitioner appears to be seeking preemption for all broadcasting towers not the rapid implementation of the DTV system for which the proposal is being considered. If timely implementation of DTV is the real goal, the proposed rule making should be limited to the establishment of reasonable time limits on the processing of tower applications for DTV only.

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The petitioner appears to be seeking permanent preemption. A time limit respective of the deadlines of DTV implementation should apply.

With regard to the time limits outlined in paragraph (a) of the petitioner's proposal, the Kent County Department of Aeronautics, in administering the County's height limitation Airport Zoning Ordinance, uses an airspace review evaluation process which is coordinated with the State of Michigan and the Federal Aviation Administration (FAA). Determinations made by the FAA give vital safety information to the State and Local agencies. Any hindrance to this flow of information is not acceptable. Coordination with the State and the FAA can take from 60 to 90 days. The FAA does not have zoning authority on land use issues; this authority rests with the State and Local agencies. It is the responsibility of Local and State authorities to be diligent in protecting the public's health, safety and welfare. The proposal would make it virtually impossible to comply with the suggested time constraints. Additionally, since failure to respond within the allocated time would result in the request being deemed granted, the time restriction would effectively be applied to the Federal Government, contrary to the stated purpose. To expedite the DTV System implementation, the proponent should be required to obtain a ruling of "No Hazard" from the FAA prior to submitting state and/or local applications.

Paragraph (2) of the petitioner's proposal broadens the preemption to include "everything". It would, for example, be unreasonable for the state or local authority to justify repeatedly that a tower in close proximity to an airport constitutes a legitimate safety concern or may restrict the use of an existing airport. This statement also begs the question, by what standard is "reasonableness" measured? This Airport's Zoning Ordinance has been in place since 1961. Its objective is to provide aviation safety and protection to the users of the airport and to the people who live and work in its vicinity.

With regard to paragraph (c), when does the five-day clock start? This restriction is unreasonable. The inclusion of such a short time period demonstrates the petitioner's apparent disregard for state and local government authority.

With regard to paragraph (3)(d), Kent County's Airport Zoning Ordinance also provides for an appeal procedure. Would this procedure also be preempted? The resolution through the commission seems inappropriate. Here 10 days are given to the petitioner to respond and then no time is given to state and local governments to prepare the case for the arbitrator who is also required to respond within 5 days. Again, the petitioners have been unreasonable in the time allowed for the state and local governments to prepare for hearing. It is not clear whether or not the state and local governments will be notified of the hearing.

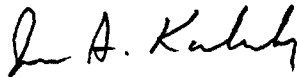
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This proposal has the appearance of a deliberate attempt on the part of the petitioners to sidestep legitimate safety concerns of state and local governments. It also appears that when implementation dates were being set either or both of the following occurred. First, there was a lack of or no consideration given to local and state authorities when setting the schedule. It is well understood that state and local governments have been given specific authority in this area for the protection of the public's health, safety and welfare. It is also understood that the review processes for Zoning Ordinances does take between 30 and 90 days. Secondly, it appears the petitioners knew and promoted an implementation schedule that would require such preemption authority. The Department opposes this proposed rule making because of its preemption of valid state and local authority to protect the public safety and welfare of persons and property in the air and on the ground.

Sincerely,



James A. Koslosky, A.A.E.  
Aeronautics Director

JAK/rdh/krs

cc: Ernest Gubry, FAA-ADO  
Oliver House, MDOT  
Craig Williams, AAEE